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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,099	02/05/2004	James L. Lambert	9022-43	3281
20792 7590 11/10/2008 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627				
EXAMINER ROZANSKI, MICHAEL T				
ART UNIT		PAPER NUMBER		
3768				
MAIL DATE		DELIVERY MODE		
11/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,099

Applicant(s)

LAMBERT ET AL.

Examiner

MICHAEL ROZANSKI

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 51 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-26 and 51 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 6,014,214) in view of Motamedi et al (US 6,725,073) and further in view of McClane et al (US 7,039,452).

Li teaches that OCT, which uses reflectance for imaging and mapping with a low coherent source, is commonly used to investigate retinal tissues (col 1, lines 12-20).

However, Li does not use OCT for the purpose of measuring the concentration of a substance in tissue. Motamedi et al teach of methods for measuring analyte concentration within a tissue using optical coherence tomography (see Abstract). Motamedi describes an 'analyte' as any substance that is measured, while another definition (not found in Motamedi) is that of a substance or chemical constituent that is determined in an analytical procedure. Motamedi specifically mentions glucose as one analyte of interest. It would have

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been obvious to modify Li which uses OCT on the retina, to use OCT on the retina for measuring the concentration of analytes as taught by Motamedi, because analyte concentrations can provide physicians with indications of a disease (see 'description of related art').

However, Li/Motamedi do not teach measuring carotenoid levels in the retina. McClane et al disclose an apparatus 10 for assessing an individual's risk of developing age-related macular degeneration (AMD) by measuring carotenoid levels (see Abstract). While McClane uses Raman imaging, he also describes why carotenoid levels are important (col 1, lines 15-30). Furthermore, McClane describes that optical reflectance would have carotenoid-related information (col 2, lines 5-26).

It would have been obvious to the skilled artisan to modify Li/Motamedi, to measure the concentration of carotenoids in the retina as taught by McClane, because the level of carotenoids may provide an indication for AMD (see 'background technology').

Response to Arguments

Applicant's arguments with respect to claims 1-26 and 51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL ROZANSKI whose telephone

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number is (571)272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

MR